

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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DAISHAWN-LAVON: MILLER EX,

Plaintiff,

5:22-cv-680 (BKS/ML)

v.

DAVID PRIMO, et al,

Defendants.

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**Appearances:**

*Plaintiff Pro Se:*

daishawn-lavon: miller ex<sup>1</sup>  
Syracuse, New York 13206

**Hon. Brenda K. Sannes, Chief United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff pro se daishawn-lavon: miller ex brought this action on June 27, 2022, alleging, inter alia, that Defendants violated his federal rights. (Dkt. No. 1). This case was referred to United States Magistrate Judge Miroslav Lovric who, on September 29, 2022, issued a Report-Recommendation recommending that Plaintiff's complaint be dismissed in its entirety with leave to amend against Defendants Bozeman and Newton. (Dkt. No. 6, at 17). Further, Judge Lovric recommended that Plaintiff's claims against Defendants Primo, Stanislaus-Fung, Temple, and Pavone be dismissed without prejudice and without leave to amend because Plaintiff seeks relief from Defendants who are immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B). (*Id.*). Magistrate Judge Lovric advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days

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<sup>1</sup> Plaintiff writes his name in lowercase letters.

within which to file written objections to the Report, and that the failure to object to the Report within fourteen days would preclude appellate review. (Dkt. No. 6, at 18).

Plaintiff has not filed objections to the Report-Recommendation. For the reasons set forth below, the Report-Recommendation is adopted, and the Complaint is dismissed with leave to amend against Defendants Bozeman and Newton.

This Court reviews de novo those portions of the Magistrate Judge's findings and recommendations that have been properly preserved with a specific objection. *Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); 28 U.S.C. § 636(b)(1)(C). “A proper objection is one that identifies the specific portions of the [report-recommendation] that the objector asserts are erroneous and provides a basis for this assertion.” *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) (internal quotation marks omitted). Properly raised objections must be “specific and clearly aimed at particular findings” in the report. *Molefe v. KLM Royal Dutch Airlines*, 602 F. Supp. 2d 485, 487 (S.D.N.Y. 2009). “[E]ven a pro se party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal . . . .” *Machicote v. Ercole*, No. 06-cv-13320, 2011 WL 3809920 at \*2, 2011 U.S. Dist. LEXIS 95351, at \*4 (S.D.N.Y. Aug. 25, 2011) (citation omitted). Findings and recommendations as to which there was no properly preserved objection are reviewed for clear error. *Id.*

Having reviewed the Report-Recommendation for clear error and found none, the Court adopts it for the reasons stated therein.

For these reasons, it is hereby

**ORDERED** that Magistrate Judge Lovric's Report-Recommendation, (Dkt. No. 6), is **ADOPTED** in all respects; and it is further

**ORDERED** that that Plaintiff's Complaint, (Dkt. No. 1), is dismissed in its entirety pursuant to 28 U.S.C. § 1915(e); and it is further respectfully

**ORDERED** that Plaintiff's Complaint, (Dkt. No. 1), is **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND** against Defendants Bozeman and Newton for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further

**ORDERED** that Plaintiff's Complaint, (Dkt. No. 1), is **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND** against Defendants Primo, Stanislaus-Fung, Temple, and Pavone because it seeks relief from defendants who are immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further


**ORDERED** that any amended complaint must be filed **within thirty (30) days** of the date of this Order; and any amended complaint must be a complete pleading which will replace the current complaint in total; and it is further

**ORDERED** that if Plaintiff files a timely amended complaint, it shall be referred to Magistrate Judge Lovric for review; and if Plaintiff fails to file a timely amended complaint, the Clerk is directed to close this case; and it is further

**ORDERED** that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: October 31, 2022  
Syracuse, New York

  
Brenda K. Sannes  
Chief U.S. District Judge